

### REMARKS

This application has been reviewed in light of the Office Action dated September 25, 2007. Claims 1-5, 11-13, 15-18, and 22-27 are pending in this application. Claims 1, 11, 13, 22, and 27 are in independent form. Favorable reconsideration is requested.

First, Applicants gratefully acknowledge the indication that Claims 1-5, 11-13 and 15-18 include allowable subject matter and that Claims 23-26 would be allowable if rewritten so as not to depend from a rejected claim. The latter claims have not been so rewritten at this time, because for the reasons given below, their base claims are believed to be allowable.

An Information Disclosure Statement and a corresponding Form PTO-1449 have been filed concurrently herewith. Applicant respectfully requests the Examiner to return an initialled copy of the Form PTO-1449, indicating the references cited thereon were considered. Should these references raise any new issues of patentability of the allowed claims, Applicants respectfully request the courtesy of an Examiner Interview before an Office Action is issued.

Claims 22, 27 and 28 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. Appln Pub. US 2003/0188252 (*Kim*).

Claim 22 recites, in part, “selecting one of a plurality of available decoding algorithms in accordance with the current state of the transmission determined in said determining step.” By virtue of this feature, different algorithms, such as lower performance but more economical (*i.e.*, sub-maximal) algorithms or higher performance but less economical (*i.e.*, maximal) algorithms can be used depending on the evaluation of

predetermined parameters which define the channel state, for example, with respect to channel noise.

The Office Action points to paragraph [0011] of *Kim* as providing “an apparatus for selecting a data rate for received data from a plurality of cyclic redundancy code (CRC) checkpassed candidate rates depending on a difference between metric values output from a variety of Viterbi decoder that is used for receiving a packet data control channel.” Applicants respectfully disagree that using the difference between metric values output from a variety of Viterbi decoders is the same as selecting from among a plurality of decoding algorithms. The *Kim* system only uses one type of decoder --a Viterbi decoder. (See paragraph 90 of *Kim*.) The tradeoffs in efficiency available by “selecting one of a plurality of decoding algorithms in accordance with the current state of the transmission...” as recited in Claim 22, has not been found to be even contemplated by *Kim*.

As Applicants have found nothing in *Kim* that would teach, suggest or even result in “selecting one of a plurality of available decoding algorithms in accordance with the current state of the transmission determined in said determining step,” as recited in Claim 22, Applicants submit that Claim 22 is allowable over *Kim*.

Independent Claim 27 recites features which are similar in relevant respects to those discussed above with respect to Claim 22 and therefore is also believed to be patentable over *Kim* for at least the reasons discussed above.

A review of the other art of record has failed to reveal anything which, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as references against the independent claims herein. Those claims are therefore believed patentable over the art of record.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

/Jonathan Berschadsky/  
Jonathan Berschadsky  
Attorney for Applicants  
Registration No.: 46,551

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200